

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**Your Fantasy Warehouse, Inc.,
et al.,**

Plaintiff,

v.

Timothy Hugh Dials,

Defendant.

Case No. 2:24-cv-3979

Judge Michael H. Watson

Magistrate Judge Jolson

OPINION AND ORDER

This matter comes before the Court on the Motion for Clerk's Entry of Default against Defendant Timothy Hugh Dials, ECF No. 27, filed by Plaintiffs Your Fantasy Warehouse, Inc., and Ugly Christmas Sweater, Inc. For the reasons below, Plaintiffs' motion is **DENIED WITHOUT PREJUDICE**.

Federal Rule of Civil Procedure 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." So, before entering default against any defendant, the Clerk must ascertain not only whether the defendant has filed a responsive pleading but also whether the defendant has taken any action to "otherwise defend."

Suvak v. Caterpillar Fin. Servs. Corp., No. 3:21-CV-00032, 2021 WL 6502053, at *1 (M.D. Tenn. Apr. 13, 2021). While merely entering an appearance may not be sufficient to prevent the entry of default, a court may exercise its discretion and


refuse to enter a default if a defendant appears and indicates a desire to contest the action. *HMV Properties Ohio, LLC v. IDC Ohio Holdings, LLC*, No. 2:08-CV-895, 2009 WL 10679177, at *2 (S.D. Ohio Feb. 2, 2009) (denying plaintiff's motion for entry of default where defendant indicated desire to contest action).

Here, Defendant appeared and argued against Plaintiffs' request for a temporary restraining order and preliminary injunction. ECF Nos. 9, 10, 15. He notified the Court of his compliance with its Orders, ECF No. 19, and the Court granted him an extension to file an Answer, ECF No. 21, and leave to proceed *in forma pauperis*, ECF No. 25. Although he has yet to file his Answer (which, at this point, is untimely), and although his appeal of the Court's Order on the preliminary injunction was dismissed for want of prosecution, ECF No. 26, his prior conduct described above supports his intention to "otherwise defend" within the meaning of Rule 55(a). Thus, Plaintiffs' motion requesting that the Clerk enter default against Defendant is **DENIED WITHOUT PREJUDICE** to renewal if and when appropriate.

Further, the Court **ORDERS** the parties to appear for a status conference on **June 17, 2025, at 3:00 P.M.**

The Clerk shall terminate ECF No. 27 as a pending motion.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT